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the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

- (b) Except as otherwise provided in this subpart:
- (1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart; and
- (2) CCC will send any notice of rejection of approval to the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees of the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.
- (c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:
- (1) In §1423.2, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideration of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Farm Service Agency (hereinafter referred to as "FSA"). The time of filing appeals, forms for requesting an appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the FSA regulations governing appeals, 7 CFR part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and
- (2) In §1423.2(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable CCC regulations. After expiration of a period of suspension or debarment, a warehouseman may, at any

time, apply for approval under this subpart.

[Amdt. 3, 50 FR 42513, Oct. 21, 1985]

§1423.7 Exemption from requirements.

- (a) If warehousing services in any area cannot be secured under the provisions of this subpart, and no reasonable and economical alternative is available for securing such services, the President or Executive Vice President, CCC, may exempt, in writing, applicants in such area from one or more of the standards of this subpart and may establish such other standards as are considered necessary to safeguard satisfactorily the interests of CCC.
- (b) Warehousemen who are currently under contract with CCC will be required to meet the terms and conditions of these regulations at the time of renewal of their contract.

§1423.8 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR part 1423, Subpart—Standards for Approval for Dry and Cold Storage Warehouses for Processed Agricultural Commodities, Extracted Honey, and Oils) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0052, 0560–0044, 0560–0064, 0560–0065, 0560–0034, and 0560–0041.

[Amdt. 3, 50 FR 42513, Oct. 21, 1985]

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

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AUTHORITY: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b, 714c, and 714j.

Source: 61 FR 37595, July 18, 1996, unless otherwise noted.

§1425.1 Applicability.

This part sets forth the terms and conditions that a Cooperative Marketing Association (CMA) must meet to obtain from CCC marketing assistance loans (loans) and loan deficiency payments on behalf of its members for the 1996 and subsequent crops of a commodity. A CMA meeting such terms and conditions may obtain loans and loan deficiency payments with respect to any crop of an eligible commodity for which a loan and loan deficiency payment program is in effect.

§1425.2 Administration.

On behalf of CCC, the FSA will administer the provisions of this part under the general direction and supervision of the Deputy Administrator. In the field, the provisions of this part will be administered by the State and county FSA committees.

§1425.3 Definitions.

The following definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 718 of this title and parts 1421 and 1427 of this chapter shall also be applicable except where those definitions conflict with the definitions in this section.

Active member means a member who has utilized the services offered by a CMA 1 of the 3 preceding CMA fiscal years or such shorter period as may be provided in the CMA's articles of incorporation or bylaws.

Approved cooperative marketing association means a CMA that has been approved by CCC to participate in loan and loan deficiency payment programs

authorized with respect to one or more authorized commodities.

Authorized commodity means those commodities for which an approved CMA may apply for loans, including barley, canola, corn, cotton, flaxseed, mustard seed, oats, rapeseed, rice, safflower, seed cotton, sorghum, soybeans, sunflower seed, and wheat.

Eligible commodity means a commodity that meets the eligibility requirements applicable to such commodity set forth in Chapter XIV of this title that is delivered to, or that is acquired by, a CMA.

Member means a person who has fully paid for the membership stock or earned equity credits; was accepted by the CMA; and is entitled to all membership rights including voting and holding office except where the law of the State in which the CMA is incorporated provides for stock subscribers as members but does not allow them to hold office.

§1425.4 Approval.

- (a) For a CMA to participate in a loan program with respect to the 1996 through 2002 crops of authorized commodities, a CMA must submit an application for approval with respect to such authorized commodities to CCC. An application must include:
 - (1) A completed Form CCC-846;
- (2) The latest financial audit of the CMA including any accompanying notes, schedules, or exhibits, certified by a certified public accountant from the books of original entry as fairly representing the financial condition of the CMA;
- (3) A copy of the articles of incorporation or articles of association, by-laws, all marketing agreements for eligible commodities, and any other document that is requested by CCC with respect to the CMA's methods of conducting business that an official of the CMA has certified as being current;
- (4) A conflict of interest statement (Form CCC-846-2) from each director, officer, and principal employee;
- (5) Resolutions made by the CMA board of directors that provide that the CMA will abide by provisions of this part and the nondiscrimination provisions thereof:

- (6) A statement of any CMA transactions that have occurred either in the year before the initial application for approval is submitted, or are contemplated by the CMA as provided in §1425.12;
- (7) A detailed description of the method by which proceeds from a pool of eligible commodities for which loans are obtained will be distributed as provided for in §1425.18; and
- (8) Other information requested by CCC concerning the organizational, operational, financial or any other aspect of the CMA determined by CCC to be necessary to act upon the application for approval.
- (b) An approved CMA must submit, on an annual basis, the following information to CCC:
 - (1) A completed Form CCC-846-1;
- (2) The CMA's latest complete financial audit;
- (3) The numbers of active and inactive members;
- (4) A statement showing the allocated equity in the CMA owned by active members, inactive members, and others, and the un-allocated equity in the CMA:
- (5) The names of any members who own in excess of 10 percent of the equity of the CMA and the amount owned by each;
- (6) The quantity of each eligible commodity delivered to the CMA for marketing and the portion of such commodities received from active members during the prior year;
- (7) The quantity of each eligible commodity tendered by the CMA to CCC as security for a loan and the quantity of such commodities redeemed during the prior year;
- (8) The quantity of each commodity tendered to CCC for loan during the prior year; and
- (9) A statement of any CMA transactions that either have occurred in the CMA's prior fiscal year of operations or are contemplated to occur in the CMA's current fiscal year as provided for in §1425.12.
- (c) An approved CMA shall promptly furnish to CCC:
- (1) Any changes in the articles of incorporation, bylaws, and marketing agreements of the CMA;

- (2) Any resolutions affecting loan operations:
- (3) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with §1425.12(d):
- (4) Any change in pooling operations with an explanation of the change and why such change was necessary; and
- (5) Additional information as may be requested by CCC at any time with respect to the continued approval by CCC of the CMA.
- (d) Approved CMA's must submit revised applications as required by this section every 5 years, or more often if CCC requests.
- (e) CMA's applying for approval to participate in the loan program for cotton shall execute Form CCC-Cotton G, Cotton Cooperative Loan Agreement, with CCC.

§1425.5 Confidentiality.

Information submitted to CCC with respect to trade secrets, financial or commercial operations, or information concerning the financial condition of a CMA, whether for initial approval or continued approval, shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosures are necessary for the conduct of a loan program or such information is required to be disclosed by law.

§1425.6 Approved CMA's.

- (a) CCC shall, in accordance with the provisions of this part, approve a CMA to obtain loans and loan deficiency payments.
- (b) CCC may approve a CMA to participate in a loan program with respect to the 1996 through 2002 crop of a commodity as:
 - (1) Unconditionally approved; or
 - (2) Conditionally approved.
- (c)(1) A CMA may be conditionally approved if CCC determines that it has substantially met all the requirements of this part, and the failure to meet the remaining requirements is due to reasons beyond the control of the CMA and not due to the CMA's negligence; and
- (2) Such CMA must agree in writing to meet all requirements for approval

set forth in this part within the time period specified by CCC. When a CMA can only comply with the regulations by amending its articles of incorporation or bylaws at a membership meeting, CCC may accept a board of directors' resolution agreeing to recommend to the members, at the next meeting of the members, the required changes to the articles of incorporation or bylaws as compliance with the requirements for approval for purposes of this section. Board resolutions in which the CMA agrees to comply with other provisions of this part may be accepted by CCC as compliance with the requirements for approval for purposes of this

(d) A CMA is approved to participate in a loan program for an authorized commodity until such time as the CMA's approval is suspended or terminated by CCC.

§1425.7 Suspension and termination of approval.

- (a) An approved CMA may be suspended by CCC from further participation in a loan or loan deficiency payment program if CCC determines that the CMA or a member CMA, as specified in §1425.19:
- (1) Has not operated in accordance with the conditions specified in such CMA's application for approval;
- (2) Has not complied with applicable regulations; or
- (3) Has failed to correct deficiencies noted during an administrative review or an audit of the CMA's operations with respect to a loan program.
- (b) Such suspension may be lifted upon the receipt of documents indicating that the CMA has complied with all requirements for approval. If such documents are not received within 1 year from the date of the suspension, the CMA's approval for participation in a loan program will terminate automatically.
- (c)(1) CCC may terminate the approval of the CMA's ability to pledge commodities as collateral for CCC loans or loan deficiency payments by giving the CMA written notice of such termination.
- (2) An approved CMA may at anytime, upon written notice to CCC, voluntarily terminate the CMA's partici-

pation in a loan program, provided that the CMA does not have any outstanding loans at the time of voluntary termination.

(d) Ten days after the date CCC suspends or terminates the approval of a CMA to participate in a loan program or anytime thereafter, CCC may, on demand, call all outstanding CCC loans made to the CMA. The commodities pledged as collateral for such loans may be redeemed not later than the date specified by CCC. If redemption is not made by such date, title to the commodity shall vest in CCC and CCC shall have no obligation to pay for any market value the commodity may have in excess of the principal amount of such loans.

§1425.8 Ownership and control.

- (a) All approved CMA's must be owned and controlled by active members of the CMA.
- (b) The CMA must establish that its active members own more than 50 percent of the allocated equity of the CMA. Such ownership equity shall be in the form of stock, revolving fund certificates, capital, retains book credits, or other capital interests issued by the CMA. In determining the requisite equity held by active members, the following shall be deducted from the amount of equity allocated to each active member:
- (1) The allocated equity held by any active member who owns more than 10 percent of the CMA's total equity; and
- (2) The allocated equity of any active member that has acquired equity as a result of a loan from the CMA unless the member is obligated to repay the loan within 1 year.
- (c) The organization and operation of the CMA shall be under the control of its active members. A CMA shall be considered to be under the control of its active members if more than 50 percent of its membership consists of active members.
 - (d) All directors must be:
 - (1) Active members of the CMA;
- (2) Representatives of active members who are also employed as a farm manager or its equivalent (including an officer of a CMA or a partner in partnership); or

- (3) Officers, employees, or active members of an active member CMA; and
- (4) A director shall be nominated and elected by members except when selected to fill the unexpired term of a director so elected.
- (e) An applicant or an approved CMA not under the ownership or control, or both, of its active members, may be approved by CCC to participate in a loan program if the CMA is able to establish that, by retiring the equity of its inactive members or by obtaining new members, the CMA can vest ownership and control in its active members, as required by this section, by a date specified by CCC.

§1425.9 Charter and bylaw provisions.

- (a) The articles of incorporation, articles of association, or the bylaws of the CMA shall comply with each of the following requirements:
- (1) The CMA shall hold an annual meeting of members or delegates at one or more locations within its operating area that will afford a reasonable opportunity for all members or their delegates to attend and participate;
- (2) The CMA shall give written notice to each member or delegate, of the time, place, and purpose of all regular and special meetings of members or delegates; and
- (3) The CMA shall admit to membership every applicant who applies for admission for the purpose of participating in the activities of the CMA, and is eligible for membership under the statute incorporating the CMA.
- (b) A CMA may refuse membership to an applicant whose admission would prejudice, hinder, or otherwise obstruct the interests or purposes of the CMA.
- (c)(1) Nominations for election of delegates and directors shall be made by members.
- (2) Nominations for officers shall be made by elected directors or by members when nomination by members is authorized in the CMA's articles of incorporation or bylaws.
- (3) Nominations may be made by balloting, nominating committee, petition of members, or from the floor, provided that nominations from the floor shall be requested in addition to nomina-

tions made by a nominating committee or by petition.

- or by petition.

 (d) The election of directors, delegates, and officers shall be by ballot when there are two or more nominees for a position, or there are more nominees than there are positions to be filled.
- (e) Each member of the CMA shall have a single vote except that CCC may approve another voting method that will adequately protect the ownership and control interests of the members of the CMA.
- (f) Voting by proxy shall be prohibited, except if a CMA:
- (1) Determines that voting by proxy is necessary to amend the CMA's articles of incorporation, articles of association, or bylaws; and
- (2) Establishes, to the satisfaction of CCC, that the law of the State in which the CMA is incorporated permits voting by proxy, but does not permit members to vote by mail, with respect to such issue.
- (g) Each member of the CMA shall annually be given a summary financial statement of the CMA that is based on an annual audit conducted by a certified public accountant.

§1425.10 Financial condition.

- (a) An approved CMA must be financially able to make financial advances to its members and to market commodities of such members.
- (b) The factors that will be considered in determining the financial condition of a CMA include:
- (1) The ability of the CMA to meet current obligations, including the expenses of marketing the commodities on behalf of its members; and
- (2) The ability of the CMA to make advance payments to its members, either from its own funds or through arrangements with financial or other institutions.
- (c) The CMA shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in table 1) multiplied by the total number of such units of commodity for which the CMA is approved, or requesting approval, to participate in loan programs and handled by the CMA during the preceding marketing year,

or, if the CMA is in its first full marketing year of operations, the estimated quantity of such commodity that it will handle during such year.

- (1) If the amount of the net worth of the CMA is between 34 and 99 percent of the amount computed in accordance with paragraph (c), and the CMA is determined by CCC to be otherwise financially sound, CCC may determine that such CMA meets the requirements of this section. Such a determination by CCC may be made if:
- (i) The board of directors of the CMA agrees to retain capital in the amount set forth in table 2 with respect to each unit of the commodity delivered to the CMA until the net worth of the CMA is at least equal to the amount computed in accordance with paragraph (c), and
- (ii) The CMA agrees to deduct from pool proceeds the full amount of the estimated expenses of handling the commodities received by the CMA.
- (2) The failure to carry out such capital retention agreements shall be grounds for suspending a CMA approval.

Table 1

Commodity	Unit	Amount per unit
Barley	Bushel	0.13
Canola	Hundredweight	0.62
Corn	Bushel	0.13
Cotton	Bale	6.40
Flaxseed	Hundredweight	0.62
Mustard Seed	Hundredweight	0.62
Oats	Bushel	0.13
Rapeseed	Hundredweight	0.62
Rice	Hundredweight	0.52
Safflower	Hundredweight	0.62
Seed Cotton (lint basis)	Pound	0.008
Sorghum	Hundredweight	0.19
Soybeans	Bushel	0.43
Sunflower Seed	Hundredweight	0.62
Wheat	Bushel	0.15

Table 2

Commodity	Unit	Amount per unit
Barley	Bushel	0.07
Canola	Hundredweight	0.32
Corn	Bushel	0.07
Cotton	Bale	3.20
Flaxseed	Hundredweight	0.32
Mustard Seed	Hundredweight	0.32
Oats	Bushel	0.07
Rapeseed	Hundredweight	0.32
Rice	Hundredweight	0.26
Safflower	Hundredweight	0.32
Seed Cotton (lint basis)	Pound	0.004
Sorghum	Hundredweight	0.10
Soybeans	Bushel	0.22

Table 2—Continued

Commodity	Unit	Amount per unit
Sunflower Seed Wheat		0.32 0.08

- (d) For the purposes of paragraphs (b) and (c), the net worth of the CMA shall be reduced by the value of the amount of any assets or funds that are not reflected as a liability of the CMA in the financial statement of the CMA and that are:
- (1) Pledged as security, deposited, or otherwise used to secure or guarantee any indebtedness of the CMA; or
- (2) Deposited in a restricted account or otherwise used to guarantee the performance of an obligation of the CMA.

§1425.11 Operations.

- (a) A CMA shall establish to the satisfaction of CCC, with respect to the commodity for which approval is requested, that the CMA is so organized and staffed by individuals employed directly by the CMA that it is able to perform contracts with its members and to provide an effective marketing operation for its members.
- (b) If a CMA cannot satisfactorily establish that it can provide an effective marketing operation for its members, the CMA may enter into a marketing agreement with another CMA to market the commodity only if:
- (1) Such marketing agreement is permitted by law:
- (2) The articles of incorporation, articles of association, or bylaws of the CMA acquiring the marketing service and the marketing agreement such CMA has entered into with its members provide the necessary authority to enter into such agreement;
- (3) The CMA acquiring the marketing service is a member of the CMA that will provide the marketing service; and
- (4) The CMA that will provide the marketing service has been approved under this part to obtain loans for such commodity.
- (c) Any marketing agreement entered into by a CMA in accordance with the provisions of paragraph (b), must, as determined by CCC:
- (1) Adequately protect the ownership and control interests of the CMA members:

- (2) Be in the best interest of the members of the CMA acquiring the service; and
- (3) Require that all proceeds from the marketing operation be distributed as provided in §1425.18.

§1425.12 Conflict of interest.

- (a) The CMA shall not be approved for participation in loan programs unless CCC determines that the CMA's transactions, if any, that are of a kind described in this section, have not operated and will not operate to the detriment of members of the CMA.
- (b) The CMA shall submit with the initial application for approval, and with each recertification, a detailed report concerning all of the transactions of the CMA (including transactions involving purchases, sales, handling, marketing, insurance, transportation, warehousing, and related activities) with the following persons that differ from transactions entered into by the CMA with its general membership:
- (1) Any director, officer, or principal employee of the CMA, or any of their family members;
- (2) Any partnership from which any person is entitled to receive a percentage of the gross profits;
- (3) Any CMA in which any person owns stock:
- (4) Any business entity from which any person receives fees for transacting business with or on behalf of the CMA; or
- (5) Any business entity in which an agent, director, officer or employee of the CMA was an agent, director, officer or employee of such business entity.
- (c) The CMA shall also submit a statement as to whether any transactions of the kind described in paragraph (b) are contemplated between the date of the application, or the date such information is requested to be submitted in accordance with §1425.4, as applicable, and the end of the next marketing year for the authorized commodity. If any transactions are contemplated, the CMA shall submit a detailed explanation of such contemplated transactions and a statement of the reasons for such transactions.
- (d) The CMA shall furnish information, as requested, showing the interest

or relationship of its directors, officers, and principal employees and their family members with persons who engage in any business relating to a commodity for which the CMA is approved to obtain loans. Such information shall be revised to reflect any change in any such interest or relationship.

§1425.13 Uniform marketing agreement.

- (a) The CMA must enter into a uniform marketing agreement with each member who delivers a commodity to an eligible pool for which a loan is obtained on any quantity of the commodity in such pool.
- (b) A CMA may provide alternative methods of marketing commodities to its members, in addition to the methods set forth in its marketing agreement, if the terms and conditions thereof are reasonable to its members, and information concerning the use of such methods of marketing are made available to all members.
- (c) An approved CMA, when authorized by CCC, may offer additional marketing methods to its members on a limited membership basis for a period not to exceed 2 crop years before making such marketing method available to all members. If such limited marketing method is adopted as a permanent marketing method by the CMA, information concerning such method and participation in such method shall be made available to all members. Such information may be published in the CMA's membership publication or included in other written notice mailed to members.

§1425.14 Member business.

At least 80 percent of a crop of an authorized commodity that is acquired by, or delivered to, the CMA for marketing must be produced by its members in order for the CMA to obtain a loan for such crop. CCC may, for a period not to exceed 2 years, waive such requirement for a CMA if:

(a) The quantity of such crop acquired by the CMA for marketing, from its members, has a value greater than the value of the quantity acquired or received from nonmembers for marketing;

- (b) The CMA can establish to the satisfaction of CCC that such authorization is necessary for the efficient operation of the CMA; and
- (c) The CMA has a plan, approved by CCC, that CCC determines to be in the CMA members' best interest and will bring the CMA into compliance with the provisions of this section. Commodities purchased or acquired from CCC and processed products acquired from other processors or merchandisers shall not be considered in determining the volume of member or nonmember business.

§1425.15 Vested authority.

An approved CMA shall have the authority to pledge as collateral for a loan the commodity delivered to it by its members, to place a lien on such commodity, and to market the commodity on behalf of its members even though the individual members retain the right, in effect, to determine the price at which the commodity can be marketed by the CMA.

§1425.16 Payment limitation.

Approved CMA's shall monitor marketing loan gains, loan deficiency payments, and other payments they receive from CCC on behalf of their members and ensure that the sum of the amounts received for each member does not exceed the member's payment limitation determined in accordance with part 1400 of this chapter.

§ 1425.17 Eligible commodity and pooling.

- (a) A CMA may establish separate pools as needed for quantities of a commodity.
- (b) Loans will be made available to approved CMA's with respect to a quantity of an eligible commodity included in an eligible pool as provided in paragraph (e) and the beneficial interest provisions of parts 1421 and 1427 of this chapter.
- (c) A pool shall be eligible for loans if:
- (1) All of the commodity included in the pool is eligible for loans, except as provided in paragraph (d);
- (2) The eligible commodity in such pool was delivered to the CMA for marketing for the benefit of the members

- of the CMA by members who retain the right to share in the proceeds from the marketing of the commodity in accordance with §1425.18.
- (3) Except with respect to a quantity of a commodity pledged as collateral for a loan and that is redeemed within 15 work days from the date the CMA receives the proceeds from CCC, all of the commodity placed in such pool was delivered by members who have agreed to accept a payment of the initial advances made available to such producers by the CMA with respect to such commodity in accordance with §1425.18(a).
- (d) If CCC determines that a CMA has inadvertently included in a pool a quantity of commodity that is ineligible for loan because of grade, quality, bale weight or repacking in the case of cotton, or other factors, the remaining quantity of commodity shall remain eligible for loan.
- (e) Loans and Loan Deficiency Payments will be available to the CMA for the quantity of a commodity stored commingled in an approved warehouse equal to the smaller of:
- (1) The quantity of an eligible commodity received from members of the CMA; or
- (2) the quantity of commodity that is in the CMA's inventory.
- (f) The CMA must have in inventory a quantity of commodity of each class and grade at least equal to the quantity of that commodity of each class and grade pledged as loan collateral.
- (g) Loans will be available to the CMA for the quantity of a farm-stored commodity that is, pursuant to such CMA marketing agreement with a member, part of the CMA's pool.
- (h) Except as provided in paragraph (c)(2), loans will be available to the CMA for the quantity of the eligible commodity stored identity preserved in an approved warehouse that was received from members of the CMA and that is in the CMA's inventory at the time the commodity is pledged as collateral for a loan.
- (i) Loan eligibility for commingled commodities stored on a farm or in a warehouse may be transferred to an approved warehouse.
- (j) Commodities pledged as collateral for CCC loans shall be free and clear of

all liens and encumbrances based on an approved CMA's financial agreements or the CMA shall obtain a completed Form CCC-679, Lien Waiver. Approved CMA's shall not take any action to cause a lien or encumbrance to be placed on a commodity after a loan is approved.

(k) If a loan is obtained with respect to any quantity of a crop of a commodity that has been pooled, allocations by the CMA of costs and expenses among separate pools for the crop of the commodity in a pool shall be made in accordance with sound accounting prin-

ciples and practices.

(l)(1) Any losses incurred by the CMA in the marketing of a crop of a commodity for which a loan has not been obtained shall not be assessed against the proceeds from the marketing of a crop of a commodity included in a pool for which a loan was obtained.

- (2) Except as provided in paragraph (l)(3), losses incurred by the CMA in the marketing of a crop of a commodity included in a pool for which a loan has been obtained may not be carried forward and applied against subsequent crops of commodities included in a pool for which a loan is obtained.
- (3) CCC may authorize an approved CMA to carry forward losses incurred by the CMA in the marketing of a crop of a commodity included in a pool for which a loan has been obtained when CCC determines that such action will result in the equitable treatment of all members participating in comparable eligible pools in the period needed to offset losses and is not contrary to the purposes of the loan program.
- (4) The authorization referred to in paragraph (l) will be approved on the basis of a plan, subject to the approval of CCC, for the carrying forward of losses submitted by an approved CMA and will be continued on the condition that the approved CMA remains in substantial compliance with the approved plan, as reflected in periodic progress reports.
- (5) Factors that will be considered in determining whether to approve such a plan include, but are not limited to, the following:
- (i) The stability of the membership and participation between affected pools;

(ii) the financial condition of the CMA: and

(iii) whether the loss can reasonably be expected to be amortized and recovered from future earnings over the proposed time period.

(6) The plan submitted by the CMA

must include the following:

(i) A provision for notifying existing and new members of the CMA of the plan to deduct eligible pool losses from subsequent eligible pool gains; and

(ii) a procedure for maintaining necessary data and records needed to generate periodic progress reports as di-

rected by CCC.

(7) Any losses incurred subsequent to those contained in the approved plan may only be carried forward against subsequent eligible pools in accordance with a revised plan that has been approved by CCC under the criteria specified in paragraph (e)(3).

§1425.18 Distribution of proceeds.

(a)(1) If CCC makes available loans or loan deficiency payments with respect to any quantity of the eligible commodity in a pool, the proceeds from such loans or loan deficiency payments shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member that is included in the pool less any authorized charges for services performed or paid by the CMA that are necessary to condition the commodity or otherwise make the commodity eligible for loans or loan deficiency payments. Except with respect to commodities that are pledged as collateral for a loan and that are redeemed within 15 work days from the date the CMA receives the loan proceeds from CCC, such proceeds shall be distributed within 15 work days from such date. Loan deficiency payments received from CCC shall be distributed within 15 work days of receipt from CCC.

(2) Any advances by the CMA to its members who have a quantity of the commodity in the eligible pool for which advances are made prior to the pledging of the commodity as security for a CCC loan or used to obtain a loan deficiency payment with CCC may be credited by the CMA against the distribution required in paragraph (a)(1).

- (b)(1) If loans or loan deficiency payments are obtained from CCC for any quantity of the eligible commodity in a pool, all proceeds of such pool shall be distributed only to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member that is included in such pool.
- (2) Except as provided in paragraph (b)(3), all proceeds from an eligible pool for which a loan has been obtained shall not be combined with proceeds from ineligible pools for distribution and final settlement, and the method of distribution of proceeds shall be as specified in the information provided to CCC in accordance with §1425.4(b)(7).
- (3) Sales proceeds from an eligible pool may be combined with sales proceeds from ineligible pools or other eligible pools if the proceeds from such pools are allocated among the pools according to the quantity and quality of the commodity included in such pools.
- (4) Pool proceeds obtained from loans made by CCC shall not be combined with proceeds from other eligible or ineligible pools.
- (5) When notified by CCC that pool distributions to a member of any eligible pool must be reduced for a program year, farm, or crop, CMA shall refrain from making such pool distributions and shall, if appropriate, reimburse CCC for such distributions.
- (c) If a CMA has attempted to distribute to its members a part of its equity, as defined in §1425.8, in accordance with the articles of incorporation, articles of association or the bylaws of the CMA and has given notice of distribution both by publication and personal letter addressed to such members, the CMA may provide, to the extent permitted by the law of the State applicable to such distribution, for reallocation of such undistributed equity to its members and patrons on an equitable basis if:
- (1) The period of limitation for the payment of debts has run, such period to begin on the date the equity to be distributed was declared to be payable by the CMA;
- (2) The CMA, 30 days prior to the lapse of the period of limitation specified in paragraph (c)(1), has given the affected member notice (by certified

- mail, return receipts requested, at the member's last known address as reflected on the books of the CMA) of the amount of equity payable to such member(s) and notice that such equity may be distributed to other members and patrons if the affected member does not make a claim for such equity within the period of limitation specified in paragraph (c)(1); and
- (3) No claim for payment of the equity to be distributed has been made within the period of limitation described in paragraph (c)(1).

§1425.19 Member CMA's.

- (a) Except as provided in paragraph (c) for a CMA to obtain loans or loan deficiency payments for any quantity of an eligible commodity delivered by a member CMA or for a CMA to obtain loans for any quantity of an eligible commodity included in the same pool with the commodity delivered by a member CMA, the CMA and such member CMA must meet the requirements of this paragraph.
- (1) The eligible commodity delivered by the member CMA must be produced by the members of such member CMA.
- (2) The member CMA must be authorized to:
 - (i) Sell the commodity;
- (ii) Pledge such commodity as collateral for a loan;
- (iii) Place a lien on such commodity;
- (iv) Deliver such commodity to the CMA for marketing.
 - (3) The CMA must either:
- (i) In its articles of incorporation, articles of association, bylaws, or marketing agreement, require each such member CMA to meet the requirements of this part; or
- (ii) Determine and certify annually to CCC that each such member CMA meets the requirements of this part.
- (b) The CMA shall determine and certify annually to CCC that its member CMA's that are not subject to paragraph (a) are in compliance with the producer ownership, membership meeting, and voting requirements of applicable State law.
- (c) An approved CMA is required to meet only the provisions contained in paragraphs (a) (1) and (2) with respect

to a member CMA for whom the member CMA markets the production of the member CMA's members in accordance with §1425.11(b).

§1425.20 [Reserved]

§1425.21 Records required.

(a) An approved CMA and its member CMA's shall maintain a record that shows the quantity of commodity that is received from each of its members and nonmembers, the date received, the eligibility status for loans of each such quantity, the quality factors specified in the applicable regulations for the commodity (including class, grade, and quality, where applicable), and the quantity to which each applicable quality factor applies.

(b) The CMA shall maintain a record that shows each quantity of commodity that is disposed of; and, if sold, the date sold and the price received; and the date removed for processing or shipped. Except as provided in paragraph (c), inventory shall be allocated in the following manner until the entire inventory in a particular pool is depleted:

- (1) Commodities that are processed. The inventory of an eligible pool or ineligible pool or both eligible and ineligible pools shall be adjusted at the time the commodity is withdrawn from inventory for processing.
- (2) Commodities not processed. The quantity of a commodity to be shipped shall be allocated to an eligible pool, an ineligible pool, or a combination of eligible and ineligible pools and the pool inventories shall be adjusted accordingly when the commodity is shipped.
- (c) Records of eligible and ineligible pool dispositions need not be maintained separately so long as sales proceeds from such pools are allocated among the pools according to the quantity and quality of commodity included.

§1425.22 Inspection and investigation.

(a) The books, documents, papers, and records of the approved CMA, member CMA's, and subsidiaries, shall be maintained for a period of 5 years and shall be made available to CCC for

inspection and examination at all reasonable times.

(b) CCC shall have the right at any time after an application is received, to examine all books, documents, papers, and determine whether the CMA is operating or has operated in accordance with the regulations in this part, its articles of incorporation or articles association, bylaws, and agreements with producers, the representations made by the CMA in its application for approval, and, where applicable, its agreements with CCC.

§1425.23 Reports.

- (a) Approved CMA's shall annually provide CCC with a report to applicable county FSA offices. The report shall include all eligible and ineligible commodity receipts by FSA farm number for each member.
- (b) Approved CMA's shall at least annually report by commodity and by crop the marketing loan gains, loan deficiency payments, and any other CCC program payments received on behalf of each producer member.

§1425.24 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 1425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0560–0040.

§1425.25 Appeals.

A CMA may obtain reconsideration and review of determinations made under this part in accordance with the appeal regulations set forth at part 780 of this title.

PART 1427—COTTON

Subpart A—Regulations for the Nonrecourse Cotton Loan and Loan Deficiency Payment Programs.

Sec.

- 1427.1 Applicability.
- 1427.2 Administration.
- 1427.3 Definitions.
- 1427.4 Eligible producer.
- 1427.5 General eligibility requirements.
- 1427.6 Disbursement of loans.